IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 10.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.693 of 2006

M.K.Ramesh ... Petitioner

Vs.

`1.The Secretary to Government,
Food, Co-operation and Consumer
Protection Department,
Chennai-9.

2.The District Magistrate and
District Collector,
Nagapattinam District,
Nagapattinam.

3.The Secretary to the Government,
Food and Consumer Protection
Department, Government of India,
New Delhi. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 09.07.2006 in C.No.1/PBMMSECACT/2006(C3) against the petitioner's brother Mahesh, son of Kaliyamoorthy, aged about 27 years who is confined in Central Prison, Trichy, set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

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For Petitioner : Mr.V.Parthiban
For Respondents1 & 2 : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor
For 3rd respondent : Mrs.V.Bhavani Subbarayan for
Mr.P.Kumaresan, ACGSC.,

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the brother of the detenu, by name Mahesh, who is detained as a "Black marketer" under Section 3(2)(a) read with 3(1) of the Prevention of of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), by the impugned detention order dated 09.07.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, by drawing our attention to the arrest memo, which is available at page 47 of the paper book supplied to the detenu, has contended that though the accused/detenu was arrested at 11.30 a.m., on 06.07.2006 and the case was registered at 3.00 p.m. on the same day in Crime No.292/2006 under Section 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of E.C. Act, it is not clear as to how the said crime number has been noted in the arrest memo even at 11.30 a.m. According to the learned counsel for the petitioner, in the absence of clarification by the person concerned and placing the relevant documents before the detaining authority at the time of passing of the detention order, the same gets vitiated.

4. In respect of the said argument, the learned Additional Public Prosecutor relying on paragraph 5 of the counter affidavit of the District Collector, Nagapattinam, submitted that inasmuch as the arrest was intimated to his relative at 05.01 p.m. on 06.07.2006, there is no flaw or error as argued by the learned counsel for the petitioner.

5. We have verified all the documents. The arrest memo, which is available at page 47 of the paper book supplied to the detenu makes it clear that the accused was arrested at 11.30 a.m. on 06.07.2006. The First Information Report which is available at page 44 of the paper book clearly shows that the accused was taken to the police station at 3.00 p.m. and registered a case in Crime No.292/2006 under Section 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of E.C.Act. It is not in dispute that only after 3.00 p.m., that too after registering the case, the crime number is known to any one. In such circumstances, when the arrest memo was prepared at 11.30 a.m., on 06.07.2006, it is not clear as to how the crime number has been noted in the said memo. As rightly pointed out by the learned counsel for the petitioner, the detaining authority has failed to clarify the said vital mistake appeared in the document viz., arrest memo at the time of passing of the detention order. Further, even though the detaining authority himself has filed a counter affidavit, unfortunately the said aspect has not been adverted to and explained. Though the learned Additional Public Prosecutor has submitted that the arrest was intimated to one Ramesh, relative of the detenu over phone, at the most it satisfies the mandates of law as declared by the Supreme Court in D.K.Basu's Case. We are satisfied that there is no

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explanation by any one including the person, who sworn an affidavit, how the crime number found place in the arrest memo, which was prepared at 11.30 a.m. on 06.07.2006. In the absence of such explanation, we hold that the detention order is vitiated.

6. In the light of what is stated above, the impugned detention is liable to be quashed and accordingly the same is quashed. The Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

raa

To

1.The Secretary to Government,
Food, Co-operation and Consumer
Protection Department, Chennai-9.

2.The District Magistrate and District Collector,
Nagapattinam District, Nagapattinam.

3.The Secretary to the Government,
Food and Consumer Protection Department,
Government of India, New Delhi.

4. The Superintendent,
Central Prison, Tiruchirapalli.
(In duplicate for communication to detenu)

5. The Joint Secretary to Government,
Public (Law and Order)
Fort St. George, Chennai-9.

6. The Public Prosecutor, High Court, Madras.

1 cc To Mr.C.Prakasam, Advocate, SR.47288.

HCP. No.693 of 2006

JRG(CO)
RVL 25.10.2006

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